

To: Leslie Taylor, JD - MSU Legal Counsel
Diane Letendre - Director, Affirmative Action

Fr.: Alan Leech, Interim Director, School of Music

Re: Shuichi Komiyama

I am turning over to you in this packet a number of letters, notes, and other materials that concern the actions of one of our Music Faculty members, Shuichi Komiyama.

There have been rumors about various inappropriate interactions with students for some time, and recently much has come to me as the Director of the School of Music. Students have been coming forward with complaints and information. In the past two months I am now finding out that Komiyama has become a subject of discussion between students, between faculty, and even in our community.

There seem to be numerous instances of inappropriate behaviour, unethical conduct, and sexual harassment. Students have been afraid of him for a long time, since he threatens their scholarships and entry into graduate school. He has great charisma and uses it well. Around the School of Music students and faculty talk about his 'cult' of Assistant Conductors of the MSU Orchestra (which I have told him was not a "legal" or appropriate program, but in which he persists).

I cannot determine the truth of rumors, and I felt that most of what was coming to me must be just that. However within the last two months, enough first-hand information has come to me that I must now believe that there is more than rumor to many of Shuichi's escapades.

After speaking with him in the past on a number of subjects which had to do with everything from inappropriate behavior in the classroom, to questionable management of the orchestra and related finances, and having him ignore pretty much what I told him, I know that with his attitude of "no respect" for me or the other music faculty (he has voiced this to me), he generally does not even try to comply. There are many instances of his inappropriate and unethical behavior, besides his general insubordination.

I have had many faculty in my School come to me with questions about what can be done to protect our students from him. And there is cause for concern, since next school year, it was planned that he take over the Flute teaching studio, in which he would have individual female students in his office for lessons.

Recently, it has been reported to me that the reputation of the University is much at stake in this case. Parents in Bozeman have learned about Prof. Komiyama and are saying they will never send their students to MSU to study music (and of course many students who are not music majors come to our building). The ██████ Public Schools is the first to state that they will not allow him to come into their schools ever again. We host the All-State Orchestra, which Shuichi organized last time, and if he is still to be in charge, I fear a rebellion on the part of public school music teachers across the state.

Several people in the community have now expressed to me the sentiment that "if MSU knows about what Komiyama is doing, how can they not take action?" I think it is now time to consider doing so to protect particularly our female students. I am afraid to think what still might, can, or will happen. I would rather it didn't happen at MSU.

I did not want to come forward until I had some corroboration of what has been going on. I am offended by the fact that it might be possible to simply accuse someone of actions that may or may not be true. I think that what I once had hoped were rumors, have moved into the realm of probability and reality.

I know that you will know how to proceed, and I am asking for help in protecting our students. He seems to feel (I would guess now that he has tenure) that he is invincible and students feel he is increasingly more bold.

cc: Susan Agre-Kippenhan, Dean of CAA



RE: Suspension With Pay Pending Investigation

TO: Shiuchi Komiya

FROM: Arts & Architecture

April 11, 2011

Department of Music

TO: Shiuchi Komiya

Music Research Lab

FROM: Martha Potvin, Provost

Montana Shakespeare

FROM: Susan Agre-Kippenhan, Dean

Susan Agre-Kippenhan, Dean

RE: Suspension With Pay Pending Investigation

We have received complaints which contain serious allegations of inappropriate conduct related to your interactions with MSU students and students of other schools. The complaints suggest that you have engaged in activities that, if true, would constitute a violation of the university's policies regarding sexual harassment. Other complaints relate to your activities and interactions with the symphony students both in and out of the classroom. Effective immediately, you are hereby suspended with pay from all duties relative to your employment at MSU-Bozeman pending further investigation of these issues. You are relieved of your duties and are not to return to MSU-Bozeman for any reason, unless notified by an official acting on behalf of MSU-Bozeman or myself.

At all times during the investigation, you are prohibited from discussing the allegations or the investigation with students, staff or faculty, or taking any retaliatory or retributive action against anyone you may believe have complained or participated in the investigation. You are directed not contact any students you think may have made a complaint.

You are further advised that you will be given an opportunity to identify potential witnesses who can provide information regarding these allegations, but do not solicit persons to provide supportive documentation. Failure to comply with these provisions will be a violation of university directives and treated as gross insubordination.

Please turn in your keys to Susan. If you need to access your office or come on campus for any reason, please contact the Dean's office to make appropriate arrangements to do so.

Office of the Dean

217 Cheever Hall
P.O. Box 173700
Bozeman, MT 59717-3700
www.montana.edu/caa

Tel (406) 994-4405
Fax (406) 994-3680
Email CAA@montana.edu

Montana State University
Montains & Minds



TO: Diane Letendre
Interim Director
Human Resources/Affirmative Action

FROM: Waded Cruzado
President

DATE: April 14, 2011



The University has received complaints regarding inappropriate conduct by a faculty member in the School of Music, Shuichi Komiyama. Given the nature of the allegations, I believe that a formal investigation is necessary.

Under Section 340.00 of the Non-Discrimination policy, the President may request an investigation of complaints of sexual harassment. I would like you to conduct a formal investigation into the incidents of alleged sexual harassment which the University has received.

Upon completion of your investigation, please submit your findings to the Provost and me.

WC/sm

cc: Martha Potvin, Provost

Office of the President

211 Montana Hall
P.O. Box 172420
Bozeman, MT 59717-2420
www.montana.edu

Tel (406) 994-2341
Fax (406) 994-1893

Monroe-Bilotti, Daryl

From: Taylor, Leslie C
Sent: Monday, April 11, 2011 4:05 PM
To: Monroe-Bilotti, Daryl
Subject: FW: Music Letter

From: Agre-Kippenhan, Susan
Sent: Monday, April 11, 2011 4:05:00 PM
To: Taylor, Leslie C; Potvin, Martha
Subject: Music Letter
Auto forwarded by a Rule

The letter has been given to Shuichi. He read it in my presence (Alan Leech was here was well). Shuichi took the letter with him. He is turning over musical scores that are needed for his courses. He claims to have forgotten his keys and we determined he would send them tomorrow morning with his wife Azusa Komiya (She is a GTA in music teaching piano).

He indicated that we would be hearing from his lawyer.

Thanks for all your help with this,
Susan

Susan Agre-Kippenhan
Dean, College of Arts and Architecture
Montana State University
217 Cheever Hall
PO Box 173700
Bozeman, MT 59717-3700
406.994.4405



April 15, 2011

Shuichi Komiya

[REDACTED]
Bozeman, MT 59718

Dear Professor Komiya:

The purpose of this letter is to inform you that under Section 340.0 of the MSU Non-Discrimination Policy, President Waded Cruzado has requested an investigation into allegations of inappropriate conduct in regards to your interactions with students.

With this letter, I am notifying you that I am initiating an investigation to determine if there has been a violation of MSU's Non-Discrimination policy concerning sexual harassment. Specifically, it has been alleged that you have engaged in inappropriate conduct of a sexual nature with students, including inappropriate texts, inappropriate social interactions, and sexual contact with students, and actions which could be considered to create a hostile learning environment.

The investigation and adjudication of this complaint will be conducted according to the University's Non-discrimination Policies and Procedures which are available on the web at:
http://www2.montana.edu/policy/affirmative_action/aa500.html#sec500_00. A hard copy of this policy is available upon request.

I will interview witnesses about the allegations and review available written documentation. After the witness interviews, I will contact you for an interview. During your interview, you will have the opportunity to name any witnesses you would like interviewed and to provide documentation relevant to the complaint. You have the right to have an advisor present during the interview. This person may advise you but may not participate directly in any interviews.

I will contact you once I have established an interview schedule.

This investigation is subject to confidentiality requirements in the Non-Discrimination Policy referenced above, in sections 510-512. Violation of these confidentiality requirements can also result in discipline.

Further, University policy prohibits retaliation against the witnesses or other parties to the complaint. Retaliation, if identified and confirmed, may itself lead to appropriate disciplinary action.

**Human Resources/
Affirmative Action
Office**

Hamilton Hall, Suite 7
P.O. Box 172430
Bozeman, MT 59717-2430

Tel (406) 994-2042
Fax (406) 994-7999
Email hraa@montana.edu

You were placed on paid administrative leave effective April 11, 2011 and at that time you were admonished not to contact students or discuss this matter with students and faculty. The terms outlined in the letter placing you on administrative leave continue to be in effect through the investigation of these issues.

If you have any questions regarding this process, you may contact me at 406-994-5326 or dletendre@montana.edu

Regards,



Diane M. Letendre
Interim Director
Office of Human Resources/Affirmative Action

C: President Waded Cruzado
Provost Martha Potvin
Leslie Taylor, Chief Legal Counsel
Pam Merrell, Legal Counsel

Merrell, Pamela

From: Agre-Kippenhan, Susan
Sent: Wednesday, June 15, 2011 4:28 PM
To: Merrell, Pamela
Subject: FW: S.Komiyama

forwarding

Susan Agre-Kippenhan
Dean, College of Arts and Architecture
Montana State University
217 Cheever Hall
PO Box 173700
Bozeman, MT 59717-3700
406.994.4405

----- Forwarded Message

From: Alan Leech <aleech@montana.edu>
Date: Fri, 1 Apr 2011 13:31:05 -0600
To: "Taylor, Leslie C" <lesliet@montana.edu>, susanak <susanak@montana.edu>
Subject: S.Komiyama

Leslie and Susan,

I just visited with a student who will provide a signed letter attesting to sexual harassment over quite a period of time. This is one of the [REDACTED] - apparently he even flew to [REDACTED] where she is student teaching to try to see her during the Spring Break. She will provide emails, information, and is willing to testify personally if necessary.

I am waiting for a letter from the [REDACTED] Public Schools as requested [REDACTED] which should come next week along with the materials from our student teacher. Then I will provide Leslie with all the materials I have collected in this matter.

I have been visited by many students and faculty who want music students protected from any further harassment and unethical behavior as soon as possible. Once you see the materials you will know how to proceed and where this needs to go.

I'll send materials as soon as they are collected.

Alan L.

Alan Leech, School of Music Director
Prof. of Bassoon & Saxophone
Rm.189 Howard Hall
Montana State University
Bozeman, MT 59717
406-994-3564
aleech@montana.edu

Merrell, Pamela

From: Letendre, Diane
Sent: Monday, April 18, 2011 2:16 PM
To: Komiyama, Shuichi
Subject: Student Correspondent

Professor Komiyama,

It has come to my attention that you may have tried to indirectly contact students involved in the investigation which you were notified last week would be taking place. While we have not conclusively established that you were directly responsible for the attempt, if you were, you must understand that you are not to contact any students, whether directly or indirectly, even, for example, through social networking sites.

As MSU has advised, you are not to communicate with MSU students during this investigation. You will have an opportunity to provide me with names of students you believe we should interview as part of the investigation. If you have any questions, you may contact me at 406-994-5326.

Regards,

Diane Letendre

Diane Letendre, MPA
Interim Director
Human Resources/Affirmative Action
406-994-5326

Merrell, Pamela

From: Merrell, Pamela
Sent: Wednesday, June 15, 2011 3:19 PM
To: Agre-Kippenhan, Susan; Fedock, Joseph; Young, Gregory; McClean, Carole
Cc: Taylor, Leslie C
Subject: Records Preservation--Confidential DO NOT FORWARD

All,

I am required under the law to make sure that we do not inadvertently destroy information related to potential lawsuits. I am required to notify you when I believe there is a reasonable chance that litigation might occur. I believe it is possible that some party will sue MSU in relation to the Suichi Komiya investigation; therefore, it is necessary for me to advise you to save all correspondence (including voicemail, email, videos, etc.) you or others in the college or music department may have with Komiya or his students, and that you take steps to assure it is not destroyed. You must treat any other documents related to Komiya and his students similarly and make sure that you and all others with such documents retain the documents and that they are not destroyed. This includes electronic correspondence or documents of any type, including email, word processing, calendars, voice messages, videos, photographs, information in your cellphones, including texts, etc.

If you have any such documents you may send them to me for safekeeping, if you wish.

Please treat this message confidentially and do not copy or forward it to others.

Pam Merrell
Associate Legal Counsel
Montana State University
211 Montana Hall
Bozeman MT 59717-2420
406.994.4570
Fax: 406.994.1893
pmerrell@montana.edu



May 20, 2011

Shuichi Komiyama

Bozeman, MT 59718

Dear Professor Komiyama:

We have interviewed several witnesses related to the investigation initiated on April 15, 2011. I would like to schedule a time to meet and interview you regarding the allegations related to inappropriate conduct. The specific allegations that have been made include:

- You engaged in inappropriate conduct of a sexual nature with students including sexual intercourse, physical touching, and other sexual acts.
- You made unwelcome sexual advances towards students.
- You had inappropriate and unwelcomed communications with students of a sexual nature. The communications also exhibit inappropriate conduct in a professor-student relationship.
- You provided and encouraged inappropriate social interactions to include hosting parties at your home with students in which alcohol was provided to underage students.
- You displayed other inappropriate behaviors, such as sharing hotel rooms with female students, providing alcohol and/or encouraging the use of alcohol by your students on campus, at parties at your home and prior to and during performances.

Please contact me to set up a time for the interview. I will arrange for a meeting room at the Safety and Risk Management building to hold our interview. I will provide directions to you when we schedule the interview. You have the right to have an advisor, such as your union representative, attorney, or other, present during the interview. This person may advise you but may not participate directly in any interviews. I encourage you to bring any documents you feel would be beneficial to assist in this investigation process.

**Human Resources/
Affirmative Action
Office**

Hamilton Hall, Suite 7
P.O. Box 172430
Bozeman, MT 59717-2430

Tel (406) 994-2042
Fax (406) 994-7999
Email hraa@montana.edu



September 1, 2011

Mr. Shuichi Komiyama

Bozeman, MT 59715

RE: Statement of Charges

Dear Mr. Komiyama:

Under the provisions of the MSU Faculty Handbook Section 1432.00 and Board of Regents Policy 710.2.2, I am providing you with a formal statement of charges setting forth the grounds for termination for cause.

MSU seeks termination of your employment as a tenured faculty member of Montana State University for the unethical exploitation of students, and violation of the university's sexual harassment policies and the ethical and professional standards of a faculty member. Specifically, your unwelcome sexual conduct with one of your female students and your sexual advances toward two other females were confirmed in a recent investigation resulting from complaints received by the university. The specific incidents that form the basis for the conclusion that you have violated the university policies and have unethically exploited students have been fully described in the Report of the Investigation of Allegations Concerning the Conduct of Professor Shuichi Komiyama dated July 22, 2011. This report has previously been provided to you. If you need another copy, please let me know.

I have attached a copy of the Termination for Cause policy. You will note that the policy states that you have twenty (20) days from the receipt of this charging document to submit a written response to the statement of charges and to request a formal hearing. You will remain on paid suspension during the pendency of these proceedings.

You are advised that as a member of the collective bargaining unit, you may consult with the union representative concerning this matter. The union field representative for the Montana State University Associated Faculty is Tom Burgess [406-459-2644].

Sincerely,

A handwritten signature in black ink that appears to read "Martha A. Potvin".

Martha A. Potvin
Provost and Vice President for Academic Affairs

Enclosure

cc:

Joseph Fedock
Greg Young

*Return receipt requested

**Office of the Provost
and Vice President
for Academic Affairs**
212 Montana Hall
P.O. Box 172560
Bozeman, MT 59717-2560

Tel (406) 994-4371
Fax (406) 994-7989

[REDACTED]

Findings of Fact Regarding Allegations of Student C

1. The evidence supports the contention that Professor Komiyama approached Student C to become [REDACTED]
2. The evidence is uncontested concerning the following facts:
 - a. Professor Komiyama kissed Student C on the mouth.
 - b. Professor Komiyama stayed with Student C in her apartment in [REDACTED] overnight.
 - c. Student C and Professor Komiyama went out alone to eat and drink alcohol often.
 - d. Student C was present often at Professor Komiyama's student social gatherings at his house where there was alcohol.
 - e. Professor Komiyama had a picture of Student C on his cellphone background.

3. Student C's statement that he told her he wanted to make love to her is credible. Much of the other details of Student C's statement are corroborated by independent evidence and her credibility has not been questioned by any witnesses. Further, when Professor Komiyama was first put on administrative leave, Student C wrote ██████████ supporting Professor Komiyama. This loyalty to Professor Komiyama supports her credibility. The faculty member's account of an embrace and intimate conversation between Student C and Professor Komiyama further supports Student C's allegations. On the other hand, Professor Komiyama's denial is less credible as previously explained. We conclude that a preponderance of the evidence supports Student C's statement.
4. The preponderance of the evidence supports Student C's allegation that she believed that Professor Komiyama was making sexual advances towards her. The evidence also supports her belief that if she resisted his advances, she could lose his valuable support. Finally, a person in her position would reasonably believe that refusing such advances could cause the loss of valuable educational assistance.

Discussion and Analysis Regarding Allegations of Student C

We conclude that Professor Komiyama made sexual advances towards Student C and that, therefore, this was conduct of a sexual nature.

Further, we also conclude that the conduct was unwelcome, in that Student C believed that acquiescence to his sexual conduct was necessary to obtain educational benefits provided by Professor Komiyama. We further conclude that this belief was reasonable.

We conclude that Professor Komiyama's behavior constituted quid pro quo sexual harassment of Student C. We also conclude that it constituted hostile environment harassment in that the conduct was serious and pervasive—e.g., kissing, texting sexual messages, and inviting sexual acts—such that it created a hostile environment causing Student C emotional distress.



[REDACTED]

Findings of Fact Regarding Allegations of Student D

1. The preponderance of the evidence supports the truth of the allegations of Student D. Her allegations are supported by other witnesses and she told others about his advances contemporaneous with their occurrence. In addition, some of her allegations were admitted by Professor Komiyama as follows:
 - a. That he went out alone with her to restaurant-bars and on one occasion picked her up and took her home;
 - b. That he said her performance was "sexy"; and
 - c. That he called her "Hon".
2. The preponderance of the evidence supports the credibility of Student D's statements.
3. We further find that the pattern of approach to female students related by Student D is consistent with allegations of other female students.

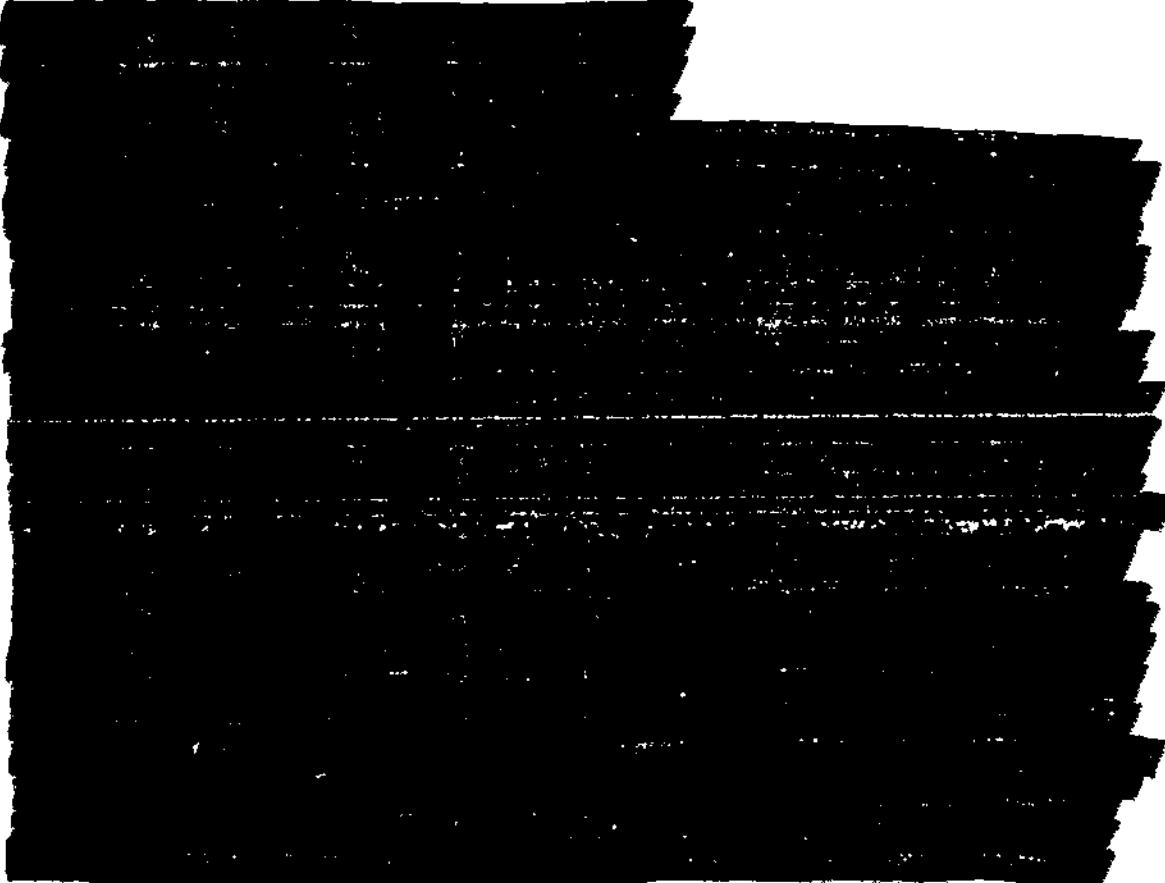
Discussion and Conclusions Regarding Allegations of Student D

Professor Komiya's conduct towards Student D was sexual in nature. While Professor Komiya denies that it was sexual, Student D believed that Professor Komiya was making advances towards her for an intimate relationship. Others who saw texts and other behavior also believed the content of the communications were sexual. Therefore, we conclude that the conduct was of a sexual nature.

We also conclude that Student D believed that her receipt of educational benefits from Professor Komiya was dependent on her acquiescence in his sexual advances towards her. Therefore, we do not believe that the conduct was "welcome" for the reasons described previously.

We further conclude that the behavior constituted quid pro quo harassment because Student D believed that the educational benefits offered by Professor Komiya were conditioned upon her acquiescing in the conduct, including going out to bars with him alone. Further, as explained previously, this belief was reasonable.

We also conclude that Professor Komiya's behavior constituted hostile environment sexual harassment because it was serious and pervasive and denied or limited the student's ability to participate in or benefit from the school's program based on sex.



Findings of Fact Regarding [REDACTED] Student

MSU engaged in no independent investigation of these allegations. The [REDACTED] School District interviewed the student, reviewed the text messages, and concluded that, despite the fact that the [REDACTED] student initiated the exchange, Professor Komiya intended to pursue an intimate relationship with the student. We have reviewed the text messages, the interview notes of the student, and had discussions with [REDACTED]. On the basis of that evaluation and Professor Komiya's failure to provide any other explanation of the messages, we accept the [REDACTED] School District's conclusion.

Discussion and Conclusions Regarding [REDACTED] Student

Even though this student is not an MSU student, we have considered this incident because MSU has an obligation to protect students from unlawful sexual discrimination when they participate in MSU Music Department programs. Further, this incident is evidence of Professor Komiya's pattern of behavior towards young female students. This situation is similar to the other situations with female MSU students described above; professor-student boundaries are crossed and the student is befriended. Eventually, Professor Komiya's pattern is to approach the student to begin a more intimate relationship. Alcohol is also a common factor in this behavior. Thus, this incident provides support to the allegations of the MSU students discussed above.

We conclude that the behavior in regards to the [REDACTED] High School student was unwelcome conduct of a sexual nature. It was not welcome given that the student immediately reported the conduct to school authorities. And, even though the student initiated the conversation, she did so as a friend. However, this does not appear to be quid pro quo harassment because Professor Komiya had no authority over this student at the time of the texting. But, given the seriousness of the conduct—an attempt at an intimate sexual relationship with an [REDACTED] high school student—it could be considered to create a hostile environment in an MSU music program.

In addition, [REDACTED] School District concluded that the conduct was sufficiently severe that it will not allow Professor Komiya to work with its students in the future.

GENERAL CONCERN OF INAPPROPRIATE CONDUCT IN TEACHING STUDENTS

In addition to the specific allegations related to sexual conduct, students complained about Professor Komiya's conduct as a music professor and orchestra and band conductor.

The allegations from a number of students and faculty members are summarized as follows:

1. Failure to create and maintain boundaries and blurring of roles with students evidenced by extensive socializing with students, drinking with students, sharing hotel rooms with students,

personal communication with students, gossiping with students about other students, advising students in personal issues, extensive personal communications with students using texting, emails and social media, and other behaviors.

2. Providing instruction to assistant conductors, especially conducting students, at the expense of rehearsal time for the orchestra members. Giving assistant conductors inappropriate authority over other orchestra members. Requiring assistant conductors and orchestra staff to perform Professor Komiya's faculty duties and responsibilities as well as providing personal services for him.
3. Unreasonably playing favorites among students to the detriment of other students. Threatening directly and indirectly that his favors will be withdrawn if students do not do as he requests, and punishing students for failure to do as he wishes.
4. Being harshly critical, unfairly and unreasonably berating student musicians; sometimes in front of the others.
5. Creating inappropriate ambitions for the orchestra and band, given MSU's Music Department goals and objectives, and, as a result, putting unreasonable demands on student musicians.
6. Showing a complete lack of respect for, and loyalty to, the Music Department, its leadership and faculty, and to MSU generally, including ignoring policies, procedures, and practices. An example is failure to comply with MSU policy on use of alcohol on campus.

Evidence Collected

Several students have made written statements including the above allegations. Many of these statements were made to the Music Department in fall semester 2010 and spring semester 2011 before this investigation began. One student raised concerns in 2009.

While this investigation focused on the sexual harassment allegations, the allegations listed above are integrally related to the sexual harassment allegations so they are summarized in this report. Many of the students we interviewed voiced these concerns, so we have reviewed the evidence and presented it here.

It should be noted that after Professor Komiya was put on administrative leave, a number of students and some parents wrote letters in support of Professor Komiya. Many of the students we interviewed made positive comments about him and his teaching style. The following is a summary of these comments:

1. He provides personal advice to students and was always available in his office; is considered a friend and like "family".
2. He is passionate about his music and transfers his passion to students, inspiring them.
3. He has elevated the MSU orchestra, jazz band, and ensembles to new levels of excellence.
4. He has created great opportunities for students to perform. Examples include opening for nationally known musicians and playing in South Asia and Hawaii.
5. He is an exceptional musician and conductor.

6. He is a wonderful mentor, guiding many students to graduate schools that they otherwise would not have attended.

Findings of Fact

1. Lack of Boundaries with Students.

We conclude that Professor Komiyama created very close relationships with some students. There is no dispute that he acted as a counselor and friend for many students. Many students told us that he helped them get through difficult personal problems such as relationship problems. One faculty member told us that Professor Komiyama asked for advice about helping a student who was suicidal. Some students, however, felt that Professor Komiyama was intrusive in their personal life. Some students specifically rejected his invitation to just "talk" because they didn't want that kind of relationship with a professor.

The record includes countless instances of close social connections between Professor Komiyama and students: parties at his home, socializing on the Hawaii trip and the South East Asia trips, socializing in his office, socializing at restaurants and bars with groups of students and alone with certain student, and the annual orchestra retreats in 2009 and 2010. Alcohol was involved in all of this social activity. In addition, Professor Komiyama interacted with students on Facebook and engaged in considerable personal texting, emailing, and social media with many students. One entry on Facebook with a student illustrates the level of his familiarity with students. The female student entered,

Why do people always show up at my TINY studio apartment where there is NO PLACE TO HIDE when I'm running around in practically nothing because I'm coloring my hair and I don't want to ruin too many clothes. Why. Oh well. . . at least I can laugh about it. But you asked for it when you just showed up.

Professor Komiyama then responded:

who's there? I may just show up in that case.

The student retorted:

Ha ha!!! A friend from forever ago!! Which made it even better. She was so not ready for unexpected nudity. It was funny.

While some students "loved" this level of intimacy with Professor Komiyama, it is, in our opinion and the opinion of the faculty members we interviewed, highly problematic. Faculty members explained, as a teacher, it is very important to remain objective about students. If you are "friends" objectivity is lost.

There is substantial evidence that objectivity was lost in these circumstances. First, many students believed they had to be friends with Professor Komiyama in order to get scholarships and help with

conducting and graduate school. Second, there was a "cult-like" group of students (especially the assistant conductors and orchestra staff) who were the in-crowd with Professor Komiya. It was reported that the ordinary orchestra members dubbed this group the "slaves". Thus, the perception, and probably reality, was that this group received special favors. If this group deserved these special perks because of their talent and dedication, there is no concern. However, because they were also personal "friends" it was easy for the other students to conclude, correctly or not, that Professor Komiya was playing favorites and providing perks not on the basis of the student's merits.

There are also problems with faculty members providing personal advice to students about serious problems. For example, if a faculty member learns that a student may be "suicidal" he should immediately refer them to MSU's counseling center or notify university officials and not try to "counsel" the student himself.

We conclude that Professor Komiya fails to establish appropriate boundaries in relationships with students.

2. Assistant Conductors.

Many students complained about the level of power the assistant conductors had over the orchestra. The assistant conductors took attendance and had the power to excuse rehearsal absences. This was very important because musicians' grades and ability to perform was almost exclusively based on attendance at rehearsals. One student specifically stated that she used her friendship with one of the assistant conductors to be excused from rehearsals, while other students were not excused. Additionally, several witnesses, including MSU staff stated that inexperienced students given this power often alienated the other orchestra members who came to resent them. Some assistant conductors and orchestra staff also resented the amount of work and responsibility they had to assume.

Some students also complained that Professor Komiya gave the assistant conductors instructing time at the expense of the orchestra members. They claimed that too much of their valuable rehearsal time was spent on student conductors and critiques of them by Professor Komiya. Examples include using the orchestra to create the conducting videos needed for applications to graduate schools. On the other hand, Professor Komiya, some faculty members, and students believed that this was invaluable experience for the assistant conductors.

In analyzing these conflicting claims, MSU should determine whether its goals are served by an undergraduate conducting program. If so, the Music Department should establish the parameters of such a program and the extent to which the MSU orchestra should be part of the program.

There are also allegations that Professor Komiya used assistant conductors to perform personal services for him. A preponderance of the evidence shows that he used them for this purpose to some extent. He hired two assistant conductors to drive him to [REDACTED] where he worked once a week as the [REDACTED] conductor. While the students may have been paid, it is easy

to believe that the students felt obliged to do drive for him in order to stay in his good graces. Employing students personally creates a potential conflict of interest which should be avoided. Professor Komiya stated that the [REDACTED] recruited, hired and paid these students, however, the [REDACTED] stated that [REDACTED] did not hire or pay them. We conclude that it is inappropriate for an MSU professor to use student to perform such personal services.

Finally, some believed that the assistant conductors were expected to do too much and stated that other faculty members did this kind of work themselves. Several assistant conductors complained about the level of work they had to perform as an assistant conductor, while others did not complain and thought they benefited from the experience. The Music Department should critically review the assistant conductor role and make determinations about appropriate levels of student responsibilities.

3. Playing Favorites.

The evidence shows that Professor Komiya established personal relationships with some students and that he provided specific and additional educational benefits and services to those students. There is also evidence that students were treated differently depending on their level of relationship with Professor Komiya.

4. Harsh Criticism.

There is considerable evidence that Professor Komiya was harshly critical of students. This evidence comes both from students and faculty members. One student complained in writing of Professor Komiya's criticism of a whole instrumental section in front of the entire orchestra. Another example provided by a witness who stated that at a rehearsal, Professor Komiya asked the orchestra "Who sucks the worst?" then pointed specifically to the student who "sucked the worst."

In the absence of evidence of a pedagogical reason for public criticism of individuals, in our opinion this criticism was unreasonably harsh, at least on some occasions.

5. Unrealistic Expectation of Musicians.

A number of students complained that Professor Komiya had unreasonable and unrealistic expectation of musicians. He required student musicians to put in excessive rehearsal time, to set up the orchestra at multiple venues, and to master unduly difficult musical works. Many of the musicians are not music majors and have other priorities, even though they want to play music. MSU has no graduate programs in music and its emphasis is on music education and technology, not on musical performance or conducting.

This problem was in clear focus in the fall when Professor Komiya, immediately after a concert playing Scheherazade, reprimanded the orchestra for not yet being proficient at their next concert piece, the Firebird Suite which is difficult. Later, Professor Komiya apologized to the whole orchestra for this conduct in an email.

6. Disrespect for MSU and the Music Department.

There were many instances of Professor Komiya showing disrespect for the Music Department. Several witnesses stated that he shook his fist as another faculty member left the room in front of the orchestra. It is also clear from many accounts that he ignored Music Department policies, faculty meetings, and direction from supervisors.

Further, he ignored MSU policies and rules, including MSU rules about alcohol on campus.

Professor Komiya gave student assistant conductors information about other students which is private student information protected by state and federal laws and university policy. He provided information about the scholarships orchestra members received. Students also related that Professor Komiya revealed private tenure and promotion information to students, and it was alleged that he suggested to students that they write negative letters to a tenure and promotion committee concerning a music faculty member.

Professor Komiya also consistently failed to follow expense reimbursement policies and other music department accounting policies.

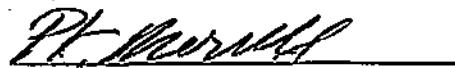
Praise for Professor Komiya

We would be remiss not to include a summary of the praise and respect for Professor Komiya that was a frequent message we heard in our interviews. There is substantial evidence that the orchestra and jazz band performed to higher levels than they had historically; that students were given opportunities to perform in venues and with musicians that had not occurred previously; that Professor Komiya forged relationships in the Bozeman music community that were beneficial for students performers; and that Professor Komiya is an excellent conductor and musician. Many students stated that Professor Komiya inspired them to pursue musical ambitions. Even students who had many complaints about Professor Komiya agreed with some of this praise.

SUMMARY CONCLUSION

Based on the preponderance of credible evidence, we find that the specific allegations of sexual harassment were substantiated.

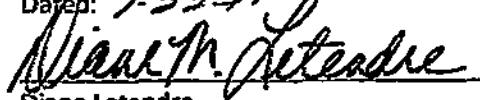
Prepared by Pamela Merrell and Diane Letendre.



Pamela K. Merrell

Associate Legal Counsel

Dated: 7-22-11



Diane Letendre

Interim Director Human Resources/Affirmative Action

Dated: 7-22-11